

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

| | | |
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| THE CITY OF URBANA, THE CITY OF |) | |
| CHAMPAIGN, and the COUNTY OF |) | |
| CHAMPAIGN, ILLINOIS, all Municipal |) | |
| Corporations, bodies politic and corporate, in |) | |
| Champaign County, Illinois, |) | |
| Joint Petitioners, |) | |
| v. |) | No. T11-0134 |
| |) | |
| ILLINOIS CENTRAL RAILROAD COMPANY, |) | |
| and the ILLINOIS DEPARTMENT OF |) | |
| TRANSPORTATION, |) | |
| Respondents, |) | |
| and |) | |
| |) | |
| PRESERVE OLYMPIAN FARMLAND, |) | |
| Intervenor. |) | |

Joint Petition for an Order of the Illinois Commerce Commission regarding a separation of grades and an authorization for the construction of a highway bridge over the Illinois Central Railroad Company railroad tracks (MP 124.70) at the tracks' intersection with the Olympian Drive Extension in Champaign County, Illinois, an apportionment of costs thereof, including directing payment to be borne by the Grade Crossing Protection Fund, and other stated or requested relief.

**JOINT PETITIONERS' BRIEF IN REPLY
TO INTERVENOR'S EXCEPTIONS AND INTERVENOR'S BRIEF
ON EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

The Joint Petitioners, by and through their Attorney Jon K. Ellis, pursuant to 83 *Ill. Admin.Code* Section 200.830, state the following as their Brief in Reply to the Intervenor's Exceptions and Intervenor's Brief on Exceptions to the Administrative Law Judge's Proposed Order:

Joint Petitioners' Brief in Reply to Intervenor's Exceptions:

The Joint Petitioners object to all of the Intervenor's Exceptions to the Administrative Law Judge's Proposed Order.

Joint Petitioners' Brief in Reply to Intervenor's Brief on Exceptions:

There is absolutely nothing new in the Intervenor's Exceptions and Brief on Exceptions that has not already been asserted (sometimes more than once) and ruled upon by the Administrative Law Judge during the more than two years that this case has been pending before the Commission. All of those rulings have been properly preserved for appeal. Moreover, the Intervenor's Exceptions and Brief on Exceptions (i) fail to allege material changes of fact or the law as required by 83 *Ill.Admin.Code* Section 200.870, (ii) are nothing more than a smokescreen that seeks to further delay the entry of a final Order, which could jeopardize funding for the construction of the grade separation that is the subject of this case, and (iii) simply seek yet another of Intervenor's already multiple bites at the apple in this case.

The Commission's Rules of Practice at 83 *Ill.Admin.Code* Section 200.870 ("Additional Hearings") provide that:

After the record in a proceeding has been marked "heard and taken" but before issuance of a final order by the Commission, the Hearing Examiner may, on application by staff or any party, on his or her own motion or when directed by the Commission, hold additional hearings. Such application shall state the reasons therefor, including **material changes of fact or of law**, and shall contain a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced. Unless directed by the Commission, the holding of additional hearings under this Section shall be subject to the prior approval of the Chief Hearing Examiner. [Emphasis added].

The Intervenor has failed to follow the procedural requirements of Section 200.870 of the Commission's Rules of Practice because the Intervenor (i) failed to serve the appropriate request on the Commission and (ii) failed to allege in its Exceptions and Brief on Exceptions any such material changes of fact or the law. Therefore, the Intervenor is not entitled to additional hearings or a reopening of this case. All issues have been ruled upon and properly preserved for appeal. This case cries out for the entry of a final Order after pending for more than two years.

The record of this case contains a complete review and analysis of all of the issues raised by the Intervenor's Exceptions and Brief on Exceptions. All of these issues were presented, examined, reviewed and ruled upon during the more than two years this case has been pending before the Commission. The Administrative Law Judge heard all of the arguments (sometimes more than once) and correctly applied the law to the facts in this railroad crossing safety case. The Intervenor in its Exceptions and Brief on Exceptions has presented no material changes of fact or the law that support inclusion of the Intervenor's Exceptions or additional hearings or that preclude the entry of a final Order in this case. For any party to suggest that additional time is needed is an outrage. What the Intervenor is trying to do with its Exceptions and Brief on Exceptions is reverse the decision of the Administrative Law Judge in the Proposed Order rather than point out exceptions in the sense of language that is ambiguous or not in compliance with the facts or the law. This is beyond the scope of what exceptions are intended to do.

The record reveals that the grade separation that is the subject of this case has been included in the Commission's annual and 5-year project plans of rail crossing capital improvements that will be partially paid for with Grade Crossing Protection Fund (GCPF) monies. Section 8 of the Motor Fuel Tax Law (35 ILCS 505/8) and Section 18c-7401 of the Illinois Commercial Transportation Law (625 ILCS 5/18c-7401) specifically authorize the Commission to determine and order the apportionment of costs and GCPF-eligible expenditures related to this grade separation. The Intervenor has not presented any authority or material changes of fact or the law that preclude the Commission from apportioning GCPF monies in this case.

Based on the foregoing, the Joint Petitioners respectfully request the Commission to enter its final Order approving the construction of the grade separation that is the subject of this case

and such other relief deemed just and proper.

Respectfully submitted,

The City of Urbana, The City of Champaign,
and the County of Champaign, Illinois, Joint
Petitioners

By: /s/ Jon K. Ellis

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NOTICE OF FILING

PLEASE TAKE NOTICE that the Joint Petitioners have filed a Joint Petitioners' Brief in Reply to Intervenor's Exceptions and Intervenor's Brief on Exceptions to Administrative Law Judge's Proposed Order in the above-captioned Matter with the Illinois Commerce Commission on January 29, 2014. A copy of the afore-mentioned document has been e-mailed to each of the individuals listed on the attached Certificate of Service.

Respectfully submitted,

The City of Urbana, The City of Champaign,
and the County of Champaign, Illinois, Joint
Petitioners

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing Joint Petitioners' Brief in Reply to Intervenor's Exceptions and Intervenor's Brief on Exceptions to Administrative Law Judge's Proposed Order was made, in addition to electronic filing with the Illinois Commerce Commission, by e-mailing a true and accurate copy thereof to:

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to each of their respective e-mail addresses listed above, on January 29, 2014.

/s/ Jon K. Ellis

Jon K. Ellis